

ORIGINAL

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF GEORGIA

SAVANNAH DIVISION

FILED
U.S. DIST. COURT
SAVANNAH, GA.

JAN 2 4 12 PM '01

CLERK *M. Lane*
U.S. DIST. CT.

JAMES CLIFFORD WILLIAMS,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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Case No. CV400-283
[CR493-82]

REPORT AND RECOMMENDATION

The government has moved to dismiss movant's 28 U.S.C. § 2255 motion on the ground that it is time-barred. For the following reasons, the Court recommends that the government's motion be GRANTED.

Movant was convicted of conspiracy to possess with intent to distribute cocaine and cocaine base under 21 U.S.C. § 846, use of a firearm in connection with a drug trafficking crime under 18 U.S.C. § 924(c), distribution of cocaine under 21 U.S.C. § 841(a)(1), and possession of a firearm by a convicted felon under 18 U.S.C. § 924(g). After his original sentence was vacated on appeal, he was sentenced by the district court on April 11, 1997 to life imprisonment plus five years. His appeal was

unsuccessful. His petition for writ of certiorari was denied on October 4, 1999. The instant § 2255 motion was dated October 20, 2000.

The Antiterrorism and Effective Death Penalty Act of 1996 amended § 2255 to require a movant to file a § 2255 motion within one year of the date movant's conviction becomes final. Movant claims that his conviction was not final until October 25, 1999, which he states was the date the mandate was issued for the Court's order of October 4, 1999. Under Supreme Court Rule 16.3, however, an order denying a petition for writ of certiorari is effective immediately upon issuance of the order, not the date of the mandate. United States v. Thomas, 203 F.3d 350, 355-56 (5th Cir. 2000).¹ Thus, movant's conviction became final on October 4, 2000, and the present § 2255 motion is untimely.

Movant also asserts that his claim under Apprendi v. New Jersey, 120 S. Ct. 2348 (2000) is not time-barred because Apprendi was decided within one year of his § 2255 motion. Under § 2255, the period of limitations runs, inter alia, from "the date on which the right asserted was initially

¹Movant's reliance on Supreme Court Rule 45.3 is misplaced. Rule 45.3 is limited to decisions by the Court on the merits, not denials of petitions for writ of certiorari.

recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review.” Because the Supreme Court has not made Appendi applicable to cases on collateral review,² the decision cannot provide a basis for satisfying the one-year statute of limitations.

The Court finds that the present § 2255 motion is barred by the statute of limitations, which expired on October 4, 2000. Accordingly, the Court recommends that the government’s motion to dismiss be GRANTED.

SO REPORTED AND RECOMMENDED this 2nd day of January, 2001.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

²In re Joshua, 224 F.3d 1281, 1283 (11th Cir. 2000) (per curiam).

United States District Court
Southern District of Georgia

James Clifford Williams)

vs)

CASE CV400-283

United States of America)

DIVISION SAVANNAH

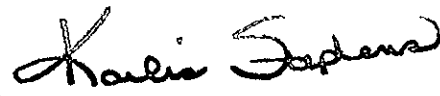
The undersigned, a regularly appointed and qualified deputy in the office of the Clerk of this district, while conducting the business of the Court for said division, does hereby certify the following:

1. Pursuant to the instructions from the Court and in the performance of my official duties, I personally placed in the United States Mail a sealed envelope, and properly addressed to each of the persons, parties or attorneys named below; and
2. That the aforementioned enveloped contained a copy of the document dated 01/02/01, which is part of the official record of this case.

Date of Mailing: 01/02/01

Date of Certificate ☒ same date, or _____

Henry R. Crumley, Jr., Clerk

By: 
Deputy Clerk

Name and Address

James Clifford Williams, Federal Correctional Institution, EF08355-021, P.O. Box 7007, Marianna, FL 32447
United States Attorney's Office, Amy Copeland, P.O. Box 8970, Savannah, GA 31412

- ☒ Copy placed in Minutes
☐ Copy given to Judge
☒ Copy given to Magistrate